

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

ePLUS INC.,)	
)	
Plaintiff,)	Civil Action No. 3:09-CV-620 (REP)
)	
v.)	
)	
LAWSON SOFTWARE, INC.,)	
)	
)	
)	
Defendant.)	

**PLAINTIFF ePLUS INC.'S BRIEF IN OPPOSITION TO MOTION TO EXPEDITE
BRIEFING SCHEDULE WITH RESPECT TO DEFENDANT'S MOTION FOR A STAY
PENDING APPEAL**

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I. INTRODUCTION

Plaintiff *ePlus Inc.* (“*ePlus*”) respectfully requests that the Court deny Defendant Lawson Software, Inc.’s (“*Lawson*”) motion to expedite the briefing schedule for *Lawson*’s motion to stay enforcement of the Court’s August 16, 2013 judgment holding it in contempt and imposing a compensatory award and coercive civil fines.

First, *Lawson*’s stay motion raises numerous substantive issues, and *ePlus* should have the opportunity to provide a full response. Among other things, the motion appears to seek a stay, not only of enforcement of the Court’s August 16, 2013 Order, but also ***of the injunction*** that has been in place since May 2011. As this Court is aware, the Court and the Federal Circuit both have already heard and rejected *Lawson*’s several prior motions to stay the injunction.

Further, *Lawson*’s motion recites no less than 17 issues that it contends present significant issues rendering it likely to prevail on appeal. In addition, *Lawson* reiterates prior arguments about collateral reexamination proceedings. Again, *ePlus* should be permitted to provide a fuller response to these arguments than can be prepared in three business days.

Second, while *Lawson*’s brief glosses over this point, the bond that *ePlus* understands *Lawson* to propose would be wholly inadequate, even if the Court determines to stay enforcement. In fact, *Lawson*’s brief nowhere explains what it intends to post by way of bond.

Third, several key members of *ePlus*’s trial team, and the persons responsible for opposing *Lawson*’s motion, have previously-scheduled travel plans during the three business day time period in which *Lawson* proposes that *ePlus* prepare its opposition brief.

ePlus should be permitted to more fully address these issues pursuant to the usual time frame allotted under the Court’s Local Rules. Accordingly, *ePlus* respectfully requests that the Court deny *Lawson*’s motion to expedite the briefing schedule.

II. ARGUMENT

A. *ePlus* Should Be Permitted A Fair Opportunity To Respond With Respect To The Numerous Issues That Lawson Intends To Raise On Appeal

Lawson's brief recites at least *17* issues that it contends merit a stay, because these issues supposedly demonstrate that it has a substantial likelihood of success on the merits of its appeal. *ePlus* disagrees with these arguments, and should be permitted a fair opportunity to explain why.

Among other points, Lawson's motion and brief appear to seek a stay *of the permanent injunction which has been in place since May 2011*. See Dkt. No. 1091 at 1, n.1 (“*The stay request is particularly directed to the prospective injunction* and related coercive fine.”); *id.* at 7 (“Accordingly, the Court *should stay the injunction and* contempt orders”); *id.* at 9 (asking that Court extend “deadline for Lawson to be ‘in compliance with the injunction’” and “corresponding start date of any coercive fine”); Dkt. No. 1090 at 1 (Lawson “hereby moves for a *stay of this Court’s order of injunction* and coercive fines (D.I. 1088) extending the deadline for Lawson to ‘be in compliance with the injunction’”) (emphases added). No such motion ought even be considered by the Court, as the time has long since passed for any further re-argument of whether the injunction should have been stayed. The only issue before the Court is whether to stay enforcement of the contempt finding and money judgments under the August 16 Order.

Both this Court and the Federal Circuit previously ruled on Lawson’s several motions to stay the permanent injunction pending appeal, and Lawson’s motions were denied on every occasion. When this Court on June 11, 2013 revised the injunction to remove Configuration 4 from its scope, Lawson appealed to the Federal Circuit, but made no motion to stay. Accordingly, it has long been settled that a permanent injunction is in place and is not stayed pending appeal.

Finally, *ePlus* should be permitted to more fully brief why Lawson's stay request would defeat the very purpose of the Court's August 2013 Order, which included civil coercive fines for the purpose of compelling Lawson's immediate compliance. The Court has already found (and the Federal Circuit affirmed) that *ePlus* is irreparably harmed in the absence of an injunction, and there was no compelling hardship to Lawson to merit that injunctive relief be denied. A stay of the injunction, contempt judgment and coercive fines would subvert the express purpose of the Court's prior rulings.

B. *ePlus* Should Be Permitted A Full Opportunity To Respond With Respect To The Inadequacy Of Lawson's Proposed Bond

Lawson proposes to post a supersedeas bond in the event the Court grants its proposed stay pending appeal. However, Lawson provides no details about the proposed bond or its amount. Based on discussions between counsel, *ePlus* understands that the bond Lawson intends to present to the Court would cover only the amount of the compensatory award for past damages to *ePlus*. Thus, the bond would not be sufficient to cover the accumulating civil coercive fines of \$62,362 *per day* that the Court has ordered Lawson to pay the government. Nor would it cover future damages to *ePlus* running from the date of the injunction forward if Lawson continues its contempt. And it bears emphasis, Lawson all but admits that it intends to continue that contempt if the Court grants the stay.¹

¹ Lawson's argument that it will be "irreparably harmed" in connection with its "ongoing business relations" if the stay is not granted plainly means that Lawson intends to rely on a stay as a grant of immunity to allow it to continue acting in contempt of the injunction. Dkt. No. 1091 at 8; *see also* Dkt. No. 1093 (Lawson brief arguing "absent a stay ... the price to Lawson of appellate review involves either the disruption of Lawson's relationship with existing customers, suffering the financial burden of coercive fines ... or possibly both.").

The cumulative dollar amounts of those sums are quite substantial, and by far exceed the amount of the compensatory award to *ePlus*. Assuming the appeal takes 18 months,² the daily civil coercive remedies alone would add up to nearly **\$28 million**. If the Court extrapolated an ongoing compensatory award to *ePlus* based on the past contempt award, *ePlus* estimates that this would be an additional \$28 million that Lawson would owe to *ePlus*. Yet Lawson does not propose that the bond cover either of these amounts.

If a stay of payment³ of the monetary awards is granted, the bond should be in an amount necessary to cover the awards *in full*, including post-judgment interest and the like. *ePlus* should be permitted a full opportunity to present these arguments.

C. Lawson’s Proposed Expedited Briefing Schedule Would Be Unfairly Prejudicial To *ePlus*

Lawson has proposed that *ePlus* have only three business days to respond to its motion to stay a multi-million dollar contempt award pending the appeal of this Court’s decision. As a practical matter, this proposal is unfairly prejudicial to *ePlus* because several members of *ePlus*’s trial team, and the persons directly responsible for opposing this motion, have pre-existing travel plans during the time when *ePlus* would have to prepare its opposition under Lawson’s proposal. Particularly when the alleged exigency is not one of *ePlus*’s making, it should not be prejudiced by Lawson’s desire for expedited treatment. As discussed *supra*, Lawson’s stay motion implicates numerous substantive issues, and provides no details about its proposed bond. *ePlus*

² This is the amount of time that the appeal from trial consumed, running from the Notice of Appeal to issuance of the mandate. This duration is not unusual for a Federal Circuit appeal.

³ Again, it bears emphasis that Lawson’s brief appears to seek not only a “stay of payment,” but in addition an *immunity from obligation to comply with the injunction* pending appeal. See Dkt. No. 1091 at 9 (arguing “the Court should *extend the deadline for Lawson to be ‘in compliance with the injunction’* ... and the corresponding *start date of any coercive fine* ... until 30 days after the Federal Circuit issues its decision on appeal of the contempt order.”) (emphasis added).

should be given a full and fair opportunity to respond to these points.

Moreover, under the Court's normal briefing schedule under the Local Rules, the Court can still resolve Lawson's stay motion prior to September 20, the date the Court's Order set for Lawson to make a showing that it has purged the contempt. Lawson's arguments are tacit admissions that it hopes to avoid continued contempt, *not* by showing compliance with the injunction, but rather by having the Court stay its obligation to comply during the months the appeal will be pending. The Court certainly should not indulge Lawson's desire to be excused from the consequences of its contempt.

Indeed, the Court has no obligation to facilitate Lawson's desire that enforcement first be stayed before Lawson is required to come forward to show it has purged the contempt. Rather, the Court should determine whether Lawson has shown it has purged the contempt. Only if Lawson has made this showing should the Court consider staying enforcement of the August 16 judgment.

III. CONCLUSION

For the foregoing reasons, ePlus respectfully requests that the Court deny Lawson's request for expedited briefing.

Respectfully Submitted,

August 26, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of August, 2013, I will serve

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with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

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